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Pro se

U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
2010 APR 14 AM 10:48  
CLERK, U.S. BANKRUPTCY  
COURT  
BY \_\_\_\_\_ DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

In re:	§	Case No. 07-41092
ROBERT EDWIN JACOBSEN	§	
xxx-xx-2723	§	
P.O. Box 1386	§	
Lafayette, CA 94549	§	Chapter 7
Debtor	§	
	§	
	§	

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**MOTION TO RECONSIDER ORDER VACATING ORDERS TO ABANDON REAL  
PROPERTY (doc 633)**

Robert Jacobsen files this Motion to Reconsider Order Vacating Orders to Abandon  
Real Property filed April 1, 2010.

This order should be vacated for the following reasons:

1. The abandonment of the houses located at 1309 Cassandra Lane, Allen, TX and  
7804 Steppinton Drive, Plano, TX were abandoned over a year before the  
Trustee filed his Motion to Vacate Orders Abandoning Real Property. Such  
filings must be within one year. FRCP 60(b). Exhibit A is a copy of the  
Debtor's Objection to Trustee's Motion to Vacate Orders to Abandon Real

Property (less attachments). It is attached as it gives a good breakdown of dates when events happened.

2. The main issue the Trustee used to argue that the past orders should be vacated was that the Debtor had knowledge prior to abandonment, that the lenders were not going to produce a copy of the note as was requested by escrow on June, 26, 2009. The Debtor filed suit against all 4 lenders in October 2009. In the complaint the Debtor claims the existing lenders blocked efforts to refinance causing the loss of the new financing, in all cases. When the lenders refused to produce a certified copy of the original note, Jacobsen made the assumption the existing lenders may not be the actual holder of the note. There was also some concern that the note or deed of trust may have been altered after signing. Both in pleadings as well as in court, the Debtor denied he had any knowledge of the note or deed of trust having been altered prior to abandonment and had no knowledge the lenders were not going to produce a certified copy of the note when requested, prior to abandonment. The Trustee was put on the stand where he testified he had no proof that the Debtor had any knowledge that someone may have modified the note or deed of trust, prior to abandonment.

The Debtor, as of today, does not know if the note or deed of trust has been modified, so how could he have known before abandonment. Until the original note and deed of trust are inspected by a qualified document examiner, the truth won't be known. At this point the statements in the 4 complaints are simply allegations.

## SUMMARY

The Debtor had no knowledge of any flaws in the note or deed of trust on the various properties prior to abandonment. The Trustee stated that he had no proof that the Debtor had any prior knowledge. The Debtor has no knowledge even today, that there is a problem with the note or deed of trust. The allegation in the complaints that states the lenders do not have the original note and/or deed of trust, or that the documents were altered, is just that, an allegation, not a fact. The court erred in making the determination that the Debtor did not inform the court of known defects in the note or deed of trust prior to abandonment. The law suits associated with each house each have 4 causes of action, all having to do with the existing lender's refusal to cooperate in the refinancing process. This refusal to cooperate happened long after the houses were abandoned by the court. The courts determination that the Debtor had prior knowledge of the alleged flaws in the note or deed of trust are not based in fact with supporting evidence that the problems with refinancing were discovered during the process of refinancing, long after the houses were abandoned.

WHEREFORE, Debtor requests of the court, for all the foregoing reasons, the ORDER VACATING ORDERS TO ABANDON REAL PROPERTY should be vacated.

Dated: April 13, 2010

Respectively submitted,



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MOTION TO RECONSIDER ORDER VACATING ORDERS TO ABANDON REAL PROPERTY (doc 633)

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 13, 2010, he served a true and correct copy of the foregoing MOTION TO RECONSIDER ORDER VACATING ORDERS TO ABANDON REAL PROPERTY (doc 633) was mailed by First Class United States mail, correct postage prepaid, upon the following parties:

 4/13/10  
Osman Malikyar      date

Label Matrix for local noticing  
0540-4  
Case 07-41092  
Eastern District of Texas  
Sherman  
Fri Jan 29 14:11:34 CST 2010

(p)ADVANTA  
WELSH AND MCKEAN RD  
P O BOX 844  
SPRING HOUSE PA 19477-0844

Aurora Loan Services  
10350 Park Meadows Drive  
Littleton, CO 80124-6800

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United States Attorney's Office  
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ALBUQUERQUE, NM 87109-4336

Wells Fargo Bank  
Business Direct Division BK Dept  
MAC S4101-050  
P O Box 53476  
Phoenix AZ 85072-3476

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Portland OR 97208-4233

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eCAST FOB Wells Fargo  
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eCAST Settlement Corporation  
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eCAST Settlement Corporation assignee of  
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eCAST Settlement Corporation assignee of  
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Services III  
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Newark NJ 07193-0001

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Advanta Bank Corp  
PO Box 8088  
Philadelphia PA 19101-8088

CitiMortgage, Inc.  
5280 Corporate Dr. Cash Processing MC025  
Frederick, Maryland 21703

Internal Revenue Service  
PO Box 21126  
Philadelphia PA 19114

Toyota Motor Credit Corp.  
19001 S. Western Avenue, WF21  
PO box 2958  
Torrance, CA 90509

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Aurora Loan Services

(u)Chase Home Finance LLC

(u)Charles Cone III

(u)Countrywide Home Loans Servicing, L.P.

(u)Countrywide Home Loans, Inc.

(d)John P Lewis Jr.  
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(d)Joyce W. Lindauer  
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(d)Christopher Moser  
2001 Bryan Street, Suite 1800  
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(d)Portfolio Recovery Associates, LLC.  
POB 41067  
NORFOLK VA 23541-1067

(u)WELLS FARGO BANK, N.A.,

(d)eCAST FOB Wells Fargo  
P.O. Box 7247-6971  
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(d)eCAST Settlement Corporation  
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End of Label Matrix  
Mailable recipients 90  
Bypassed recipients 13  
Total 103



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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

In re:	§	Case No. 07-41092
ROBERT EDWIN JACOBSEN	§	
xxx-xx-2723	§	
P.O. Box 1386	§	
Lafayette, CA 94549	§	Chapter 7
Debtor	§	
	§	
	§	

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**DEBTOR'S OBJECTION TO TRUSTEE'S MOTION TO VACATE ORDERS TO  
ABANDON REAL PROPERTY**

Robert Jacobsen files this Objection to the Trustee's motion to vacate orders to  
abandon real property as follows:

**Facts:**

The Trustee has filed this motion to vacate claiming the Debtor had prior  
knowledge that there were problems with the note and deed of trust.

Houses in question:

- |    |                                |                   |
|----|--------------------------------|-------------------|
| 1. | 7804 Steppington Dr, Plano, TX | Abandoned 2/17/09 |
| 2. | 1318 Normandy Lane, Allen, TX  | Abandoned 3/8/09  |
| 3. | 1523 Streams Way, Allen, TX    | Abandoned 6/1/09  |

DEBTOR'S OBJECTION TO TRUSTEE'S MOTION TO VACATE ORDERS TO ABANDON REAL PROPERTY

EXHIBIT A

4. 1309 Cassandra Lane, Allen, TX Abandoned 2/17/09

**Time Line of Events**

5/25/07 Debtor filed for chapter 13 bankruptcy protection.

12/5/07 Conversion of bankruptcy from Chapter 13 to Chapter 7.

1/1/08 The Trustee held the subject properties from just after conversion until they were abandoned. During that time the Trustee failed to make mortgage payments on all of the properties. By the time the properties were abandoned back to Debtor and his wife, the only way to save the properties was to refinance. Debtor and his wife did not have the money to bring current all back payments.

2/17/09 Steppington and Cassandra houses abandoned by court. See

**EXHIBIT A**

3/8/09 Normandy house abandoned by court. See **EXHIBIT A**

March 2009: Debtor and his wife applied to refinance the houses with Starwood Mortgage.

4/27/09 Starwood Mortgage issued conditional loan approval. Loan approval letter called for the lender to deliver to escrow a certified copy of the note. See

**EXHIBIT B**

6/1/09 Streams Way house abandoned by court. See **EXHIBIT C**

6/17/09 Alise Malikyar, Debtor's wife, ("**Malikyar**") mailed a letter to Aurora Loan Services requesting they send the certified copy of the note to the escrow holder, Commonwealth Land Title, Lisa Hart ("**Hart**"). See **EXHIBIT D**

6/24/09 Hart phones each lender on all houses to request the copy of the note. Hart sends an email to Debtor stating "I phoned all lenders for request of Notes and was told no." See **EXHIBIT E**

6/26/09 Hart sends faxes to each lender requesting they "Pls provide certified copy of note". See **EXHIBIT F**

The lenders all individually refused to provide the certified copy of the note. The new financing could not close. By the end of June this became apparent.

6/31/09 A complaint was filed on Streams, Normandy and Cassandra, but was later cancelled mostly due to improper jurisdiction. See **EXHIBIT G** for copy of complaint for Cassandra. (The remaining complaints are almost the same except for the house and the different lenders. The other complaints are not attached here to keep the size of this objection from getting very thick, but are available upon the court's request.)

10/5/09 – 10/22/09 Debtor files suit against the lenders due to the new loan being lost due to the lender's negligence. In the process of doing research preparing for the suit, Debtor discovered that it appeared the recorded Deed of Trust had been altered in each case. Debtor and Malikyar are from California and are familiar with the doctrine of good faith and fair dealing. When Debtor and Malikyar found out Texas never adopted this doctrine, Debtor and Malikyar wrote the words on the bottom of the note, as well as deed of trust, or, attached it as an addendum. When the Deed of Trust was recorded it seemed to have disappeared.

All of Debtor's suits against the lenders are almost the same. The new lender, Starwood Mortgage, was the same lender on each loan and requested the certified copy of the note in each case, and in each case, the existing lender's refused.

### **CONCLUSION: OBJECTION TO TRUSTEE'S MOTION**

The Trustee tries to make a case that the Debtor should have shown on his schedules the loss of the new financing and/or the newly discovered problems with the way the Deed of Trust was recorded on the subject houses. Since the lender's refusal to produce a copy of the note was not realized until after the last attempt to request the copies of the note, June 26, 2009 and the court abandoned all the houses months before this, except the Streams Way house, which was June 1, 2009, the Debtor would have to have had the ability to see the future to predict this in order to put this information on his schedules or in fact have knowledge of this event prior to abandonment.

The fact that the words about the "doctrine of good faith and fair dealing" being left off the various Deed of Trusts was not discovered until after the houses were abandoned and long after the schedules were prepared. In paragraph 30 of the Trustee's motion he states the Debtor should have notified the Trustee of the claims that were stated in the lawsuits filed. Since the Debtor had no knowledge that the existing lenders were going to frustrate the Debtor's and Malikyar's attempt to refinance which led to the discovery of the altered Deed of Trusts, it therefore would have been impossible for the Debtor to notify the Trustee prior to the houses abandonment. The event had not happened yet.

The last sentence in the Trustee's motion states the Debtor was remiss by not informing the Trustee of this knowledge that the existing liens may be void. In Debtor's complaints he claims a cause of action of "Refusal of Tender" arguing the existing debts should be extinguished due to the lenders lack of cooperation in sending in the copy of the note. The knowledge that the lenders would frustrate the efforts to refinance was not known until long after the houses were abandoned by the court.

In each of the 4 complaints against the lenders, the Debtor has also requested the various lenders to produce the original note. This is not due to information Debtor had prior to abandonment, but was triggered by the questionable behavior of the various lenders involved. The loss of the financing is post abandonment as was any knowledge of refusal of tender, refusal to produce a copy of the note or altered Deeds of Trusts. The Trustee's motion is inappropriate. By reading over the complaints against the lenders he would have knowledge that this is a "post abandonment" issue.

WHEREFORE, Debtor requests of the court, for all the foregoing reasons, the Trustee's motion to vacate orders abandoning Real Property be denied. The Trustee's motion is a frivolous motion for which he knows all events happened post abandonment. Debtor requests the court consider sanctions for this motion.

Dated: March 5, 2010

Respectively submitted,

---

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DEBTOR'S OBJECTION TO TRUSTEE'S MOTION TO VACATE ORDERS TO ABANDON REAL PROPERTY